

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY WAYNE JOHNSON II,

Defendant.

CR 23–10–BU–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 248.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Defendant Anthony Wayne Johnson II is charged with one count of conspiracy to distribute and to possess with intent to distribute controlled substances, in violation of 21 U.S.C. § 846 (Count 1), one count of possession with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1) and

18 U.S.C. § 2 (Count 2), and one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count 3), as set forth in the Indictment. (Doc. 1.) Judge DeSoto recommends that this Court accept Johnson's guilty plea as to Count 2, solely with respect to fentanyl, and Count 3 after Johnson appeared before her pursuant to Federal Rule of Criminal Procedure 11. The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 248) is ADOPTED in full.

IT IS FURTHER ORDERED that Johnson's motion to change plea (Doc. 233) is GRANTED.

IT IS FURTHER ORDERED that Johnson is adjudged guilty as charged in Count 2, with respect to possession with intent to distribute fentanyl, and Count 3 of the Indictment.

DATED this 1st day of May, 2024.



Dana L. Christensen, District Judge
United States District Court